Developing an Effective Audit and Compliance Committee

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Outline of Presentation

• Introduction
• Case study
• Discussion audit and compliance committees
• Enterprise risk management in higher education
• Mandated compliance
• Realities of enforcement actions

Case Study: University of Medicine and Dentistry of New Jersey
UMDNJ - Background

- The nation's largest ($1.8B) free-standing public health sciences university in the country with more than 6,000 students and 15,000 employees, including nearly 3,000 faculty members, located on five different campuses. It is a statewide network of eight schools, two hospitals and three faculty practice plans with more than 1,300 employed physicians on five campuses
- NJ Medical and Health Sciences Restructuring Act eliminated UMDNJ effective July 1, 2013
  - University Hospital became a stand alone state entity
  - School of Osteopathic Medicine joined Rowan University
  - All other units joined Rutgers, the State University of New Jersey

UMDNJ - Background, cont.

- UMDNJ was operating under a Corporate Integrity Agreement (CIA) with the Office of Inspector General of the Department of Health and Human Services (OIG), which began on September 25, 2009, through September 24, 2014
- Office of Ethics, Compliance & Corporate Integrity (OECCI) was responsible for University wide Compliance Program
- Under the terms of the CIA, UMDNJ was required to report certain “reportable events” to the OIG

UMDNJ - Role

- Senior Vice President, Chief Ethics and Compliance Officer
- Recruited for specific job
- Tenure
  - Began December 13, 2010
  - Concluded June 30, 2013 when Higher Education Reform implemented
UMDNJ - Compliance

• Reports to audit committee
• 40 FTE’s 2009 – 7/1/13
• Investigations unit included
• Active Board engagement/oversight
• $ 5 million budget
• Significant involvement of audit committee

UMDNJ - Audit Committee Responsibilities

• The Audit Committee is and shall continue to be responsible for the review and oversight of matters related to compliance with the requirements of Federal health care programs and the obligations of this CIA. The Audit Committee shall, at a minimum, be responsible for the following:
  
  – The Audit Committee shall meet at least quarterly and shall review and oversee UMDNJ’s Compliance Program, including but limited to the performance of the Compliance Officer and the Compliance Committee.

  – The Audit Committee shall arrange for the performance of a review on the effectiveness of UMDNJ’s Compliance Program (Compliance Program Review) for each reporting period of the CIA and shall review the results of the Compliance Program Review as part of the review and assessment of UMDNJ’s Compliance Program. A copy of the Compliance Program Review Report shall be provided to OIG in each Annual Report submitted by UMDNJ.

UMDNJ - Responsibilities, cont.

• retain an independent individual or entity with expertise in compliance with the federal health care program requirements (Compliance Expert). The Compliance Expert shall assist the Audit Committee by creating a work plan for the Compliance Program Review, overseeing the performance of the Compliance Program Review, and supporting the Audit Committee’s responsibilities for reviewing and assessing UMDNJ’s Compliance Program.

• For each Reporting Period of the CIA, the Audit Committee shall adopt a resolution, signed by each individual member of the Audit Committee, summarizing its review and oversight of UMDNJ’s compliance with the requirements of federal health care programs and the obligations of this CIA.

• At a minimum, the resolution shall include the following language:

  “The Audit Committee of UMDNJ’s Board of Trustees has made reasonable and due inquiry into the operations of UMDNJ’s Compliance Program, including the performance of the Compliance Officer and the Compliance Committee. In addition, the Audit Committee has retained an independent expert in compliance with the federal health care program requirements to support the Committee’s responsibilities for reviewing and assessing UMDNJ’s Compliance Program Review. Based on all of these steps, the Committee has implemented an effective Compliance Program to meet the requirements of the Federal health care programs and the obligations of the CIA.”
UMDNJ - Committee Structure

- Monthly meetings
- Unimpaired involvement of Senior VP Chief Ethics and Compliance Officer, SVP Internal Audit and VP of Investigations
- Strong committee chair
- Security to compliance officer, internal audit and investigations leadership
- Executive sessions

UMDNJ - Committee Responsibilities

- Scheduled monthly meetings
- Detailed review of all audits
  - Compliance, Internal Audit, Privacy and Investigations
  - Other Senior Leaders participate
- Very interactive meetings
- Oversaw compliance and audit programs
- Turnover of SVP - Compliance

UMDNJ - Responsibilities, cont.

- Oversee compliance officer/function
  - Independence
  - Relationship to Board
  - Relationship to President and "C" suite
  - Relationship to legal and finance
  - Title
  - Location
UMDNJ - Responsibilities, cont.

• Compliance officer/function
  – Ability to hire outside counsel by themselves
  – Ability to have their own budget
  – Not looking to make friends
  – Should they have a contract?

UMDNJ - Responsibilities, cont.

• Program oversight
  – Involvement of Trustees, Board
  – Ability to override management
  – Clear direction of oversight
  – Information flow from entity
    • Are they getting all necessary information?
  – Meet with compliance officer and internal audit without management
  – Compliance relationship to Internal Audit

UMDNJ - Responsibilities, cont.

• Annual Reporting
  – UMDNJ submission/response to the 21 elements required in Annual Report per the CIA
  – Applicable attachments
    • Resolution, minutes, policies, outside monitoring & compliance effectiveness reports, reportable events, summaries, etc.
  – Additional matters of current attention
  – 400 + pages of information
  – IRO (outside monitor) results
  – Certifications
Audit and Compliance Committee Characteristics

Audit and Compliance Committees - Objectives

- Is charter in writing?
- What constraints are established?
- Who are members?
  - Roles of different members?
    - Clear responsibilities
- Voting rights
- Hiring outside counsel
- Renewing appointments/terminating management
- Review of external audit – rotation obligations
  - Assure no conflicts of interest
- Recusal obligations
- Positive interactions with stakeholders

Committees – Strategies

- Egos
- Foster open communication
  - Proactive strategies
- Be careful of intimidation
- Strong leadership
- Support those that bearing unpopular news
- Regular education
- Developing accountability and authority
Committees – Openness

- Criteria established in advance
- Have individuals “on – call” in case the committee needs to speak to them immediately
- Creates attention in an organization

Committees – Restrictions

- Process for excusing president, Board members, CFO, Coach, etc. for discussion
- Established in advance
- Strong chair

Committees - Agenda

- Be careful to make sure certain committee members don’t dominate topics and discussions
- Consider sending out “items for agenda” several weeks in advance of meeting
Committees - Processes

- Voting criteria
- Recusal issues
- Involvement advice of counsel
- What is protected?
  - Attorney-client privilege and other protections
- Who leads discussion?

Committees – Best Practices

- Ensure documentation reflects discussion
- Recap prior meeting decisions
- Summarize present meeting decisions
- Timely dissemination of information
- Formalize policies to encourage accountability and create proper delegation

Best Practices, cont.

- Relationship of “C” suite during Audit committee
  - Big deal
- Knowledge of members
- Frequency of meetings
- External Pressures
  - Personal experiences
- Acknowledge skill of leadership (e.g., investigations)
- Consider creating an annual report of activities
  - Historical record of activities
Enterprise Risk Management in Higher Education

Risk Management – Monitoring
- Concept of enterprise risk management (ERM)
- Risk – any issue that impacts an institution’s ability to meet its objectives
- Risk appetite of College or University
- Potentially huge undertaking to do properly
- Importance of transparency

Risk Management – Focus
- Financial
- Operational/management
- Strategic
- Compliance/regulatory
Risk Management – Components

• Internal Environment
• Establishment of objectives
• Identify Events
• Risk assessment and risk response
• Monitoring activities
• Communication
• Information
• Work Plan ***

Risk Management – Identification

• Internal meetings/interactions
• External industry review
• Seek assistance from experts
• Keep eyes and ears open

Risk Management – Audit Committee

• Undergrad and Graduate enrollment/aid
• Fundraising
• Tuition dependency – revenue strategies
• Long-range financial plan
• Staff and student safety
• Environmental
• IT privacy/security
• Specific to organization, i.e., billing/patient care
Risk Management – Types of Risk

- Website
- Conflicts of interest
- Athletic program compliance
- Image/reputation
- Media relations
- International issues
- Investment strategies
- Debt strategies
- Specific to organization

Types of Risk for Audit Committee

- Federal law
- State law
- Financial operations and controls
- Outliers
- Bad citizens
- What can be accomplished?
- How is initiative led?
  - Resources and tools necessary
  - Management responsible

Mandated Compliance in Higher Education
Mandated Compliance - Factors

- Scope of allegations
  - Amount of damages
- Nature of allegations
- Organization type
  - Large public/private already may have compliance function
- Repeat offenders
- Poor tone at the top/lack of compliance program
- Reputation of provider

Mandated Compliance - Trends

- Executive leadership, management, and board attestations/certifications
- Disgorgement of compensation for bad actors
- Supplemental documentation requests
- Multi-issue compliance requirements
- Specific issue monitoring
- Arrangement reviews

Mandated Compliance - Problems

- Insulated from executive management
- Ineffective reporting structures
- Understaffed and underfunded
- Vetting or “cleansing” compliance reports to leadership and to board
- Structured so everyone else is a VP
- Disconnect between leadership and compliance regarding the organization’s risks
Problems, cont.

• Lack of monitoring activities
• Do not repay overpayments
• Limited use of data analytics
• Focus almost entirely on code of conduct and hotline
• Lack of risk assessments
• Limited risk specific training in operational areas

Problems, cont.

• This leads to compliance programs that:
  – Are led by marginalized compliance officers
  – Spend more time with politics than compliance issues
  – Insulated from important risk areas
  – Not involved in revenue improvement activities
  – Not aware of consulting and outside counsel activities
  – Have little understanding of systematic compliance risks across the organization

Problems, cont.

• Most importantly such programs:
  – Cannot deter, detect, prevent meaningful fraud, waste, and abuse
  – Do not obtain benefits if subject to enforcement action
Problems, cont.

- Other characteristics:
  - Lack of common understanding regarding compliance risks and their potential impact
  - Lack of common terminology
  - Lack of education regarding the impact of potential fines (Anti-kickback, False Claims Act, HIPAA), including reputational risk and impact to the organizations fund raising efforts
  - Misunderstanding of operational risk, compliance risk, enterprise risk, etc.
  - Competing priorities result in a limited focus on compliance risks

Mandated Compliance - Effectiveness

- Can personnel describe compliance program?
  - How about key executives?
- Are historical audits and assessments available for inspection or comparison?
  - Are reviews done at regular intervals or only complaint-driven?
- Do you trend high-risk areas and/or require corrective action?
  - Or does corrective action = evidence of wrongdoing?
- Is the hotline used for more than HR issues?
  - Is there a log of all calls and inquiries of compliance office with documented responses?

Effectiveness, cont.

- Has the program evolved with the organization?
  - Or is there dust on the compliance binder?
- Is there a culture of responsibility and accountability?
  - Or are “some more equal than others?”
- Is the compliance team free to raise concerns?
  - Or has the board asked who is the compliance officer?
- Is there a commitment to compliance?
  - Or is the budget less than optimal and the team housed in a offsite sub-basement?
- Can you convince the government of any of above?
  - Could be difference between repayment v. civil penalties v. criminal charges?
Effectiveness, cont.

- Follow attainable policies/protocols
- Create well-documented, standardized program
- Require physician disclosures
- Ensure course of dealing does not alter contract purpose/provisions
- Update policies and codes of conduct
- Prioritize compliance functions based on risk

Effectiveness, cont.

- Consider also:
  - Using data analytics to identify organizational profile
  - Analyzing why and when repayment v. disclosure
  - Reviewing applicable compliance assessment tools
  - Implementing three lines of defense

Effectiveness, cont.

- "The First Line" Management is accountable for identification of risks, internal controls, and compliance activities and monitoring in order to be compliant with laws and regulations.
- "The Second Line" Compliance will provide compliance management, framework and policies.
- "The Third Line" Independent Compliance Oversight and Internal Audit will provide independent oversight and monitoring.
Effectiveness, cont.

- Read AND understand:
  - Advisory opinions
  - Compliance program guidance
  - Work plans/audits
  - Settlement/indictments
  - Press releases
  - State and federal reports
  - Comments/preambles to agency pronouncements
  - Blogs/alerts

Realities of Enforcement Actions

- Indictment/information and conviction
  - Public allegations and trial
  - All questionable past statements/actions raised
  - Billed, not paid, amount drives loss
  - Special enhancements for fraud
  - "Relevant conduct" increases sentence/fine
  - Automatic exclusion/debarment
  - Collateral estoppel under fraud statutes
  - State and private liability
Realities, cont.

- Civil action and fraud judgment
  - Mandatory trebling/penalties
  - Most evidence admissible
  - To avoid self-incrimination = increase risk/liability
  - State and private liability
  - Agencies usually seek permissive exclusion/debarment

- Administrative proceedings and adverse finding
  - Multiple programs/agencies
  - Rules of evidence not applicable
  - Negative impact on civil/criminal case

Questions

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